IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.N.BASHA

CRL.R.C.No.258 of 2006 &
Crl.M.P.Nos.4298 & 1517 of 2006

P.Arumugam ... Petitioner

Vs.

Rajamani ... Respondent

Prayer : Criminal Revision Petition is filed against the order made in Crl.M.P.No.891/2005 in C.C.No.206/05, dated 05.09.2005 by the Judicial Magistrate No.II, cuddalore.

For Petitioner : Mr.M.C.Swamy
For Respondents : Mr.K.Kannan

O R D E R

The learned counsel for the petitioner submitted that the petitioner has come forward with this revision challenging the order of the Judicial Magistrate No.II, Cuddalore dismissing the petition filed by the petitioner to send the disputed cheque for hand writing expert to ascertain the age of the signature and the age of the typing matter in the cheque leaf.

2. The learned counsel for the petitioner submitted that the petitioner is arrayed as an accused and facing the trial under Section 138 Negotiable Instruments Act. It is also submitted by the learned counsel for the petitioner that the petitioner is constrained to file an application before the Judicial Magistrate No.II, Cuddalore seeking a relief of sending the disputed cheque for expert opinion to determine the age of the signature and age of the typing matter in the cheque.

3. The learned counsel for the petitioner further pointed out that the reason given by the petitioner is that he has not issued the cheque at the relevant point of time as alleged by the respondent/complainant and it is further submitted by the learned counsel that the petitioner disputes even the signature found in Ex.P.1. and therefore it is necessitated for him to come out with such a prayer.

4. The learned counsel for the respondent contended that with a view to protract the proceedings, the petitioner has come forward with a prayer for sending the disputed cheque for hand writing expert. It is also submitted by the learned counsel for the respondent that the petitioner has not disputed the signature found in the cheque which is

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marked as Ex.P1. Therefore, it is submitted by the learned counsel for the respondent that the petitioner has not made out any ground for disturbing the order passed by the Judicial Magistrate No.II, Cuddalore and the Judicial Magistrate has rightly rejected the application filed by the petitioner.

5. I have carefully considered the rival contentions put forth on either side and also perused the impugned order and other materials available on record.

6. On a perusal of the records clearly shows that the petitioner has moved the application before the Judicial Magistrate No.II, Cuddalore with a prayer to send the disputed cheque (Ex.P1) to the hand writing expert so as to find out the age of the signature and the age of the typed matter in the disputed cheque. The reasons given by the petitioner in the petition also clearly shows that the petitioner has stated that he has not issued the disputed cheque at the relevant point of time as alleged by the complainant in his complaint as well as in his evidence. It is further stated in complaint that the complainant was working under the petitioner and it seems that he has taken the cheque leaf signed and kept by the petitioner before 1990. It is also seen that the petitioner also mentioned in the petition seeking the relief of sending the cheque to the Handwriting expert opinion is as follows :

> "To prove my case if the year in which I had signed my signature is fixed it will go a long way to prove my case."

Therefore it is to be noted that the defence of the petitioner in this case is that he, even, disputing the signature in the cheque, Ex.P.1. It is also relevant to note that there is a presumption clause under Section 139 of Negotiable Instruments Act and as such once the cheque is found with the signature of the petitioner, it has to be presumed that the cheque was given towards the legally enforceable liability. Such presumption is a rebuttable presumption and therefore, a reasonable opportunity should be given to the petitioner/accused to rebut the presumption contemplated under Section 139 of Negotiable Instruments Act.

7.In KALYANI BASKAR V. M.S.SAMPORNAM JT 2007 (1) SC 77 the Honourable Supreme Court has held as follows:

> " Section 243(2) is clear that a Magistrate holding an inquiry under the CrPC in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature of writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. The cheque

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on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 CrPC without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) CrPC refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque, in question, for the opinion of the hand-writing expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable."

8. In view of the settled proposition of law laid down by the Honourable Supreme Court, as stated in the decision cited supra, I am of the considered view that no prejudice would be caused to the respondent on directing the learned Judicial Magistrate NO.II, Cuddalore to send the disputed cheque for hand writing expert to ascertain the age of the typed matter as well as the signature of the accused in the disputed cheque Ex.P.1.

9. Therefore, for the reasons stated above, the Revision Petition is allowed and the order passed by the Judicial Magistrate No.II, Cuddlore, in Crl.M.P. No.891/2005 in C.C.No.206/2003 is set aside and the said Judicial Magistrate is directed to send the disputed cheque to a hand writing expert, to ascertain the age of the signature and typed matter found in the Cheque Ex.P1, within a period of two weeks from the date of receipt of a copy of this order and the trial court is also directed to expedite the trial as expeditiously as possible more

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particularly within a period of 3 months from the date of receiving the expert opinion. Consequently, connected Crl.M.Ps are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

jikr/gg

To

1.The Judicial Magistrate No.II,
Cuddalore.

2.The Public Prosecutor,
Madras High Court,
Madras.

+ 1 CC To Mr. K.Kannan Advocate SR NO. 6084

+ 1 CC To Mr. M.C.Swamy, Advocate SR NO. 6139

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